

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
WRIT PETITION NO.2794 OF 1992.**

Shri Keshav Krishna Kate : Petitioner
versus
Shri Shankar Babu Kadam : Respondent.

Mr.P.S.Dani for the petitioner.

Mr.A.S.Gadkari for the respondent.

CORAM : D.G.DESHPANDE, J.

DATED : September 21, 2006.

ORAL ORDER

1. Heard learned advocate Mr.Dani for the petitioner and learned advocate Mr.Gadkari for the respondent. Petitioner is the landlord. The respondent is claiming to be a tenant under the Bombay Tenancy and Agricultural Land Act, 1948. (herein after referred to as the "The Tenancy Act"). The petitioner had filed an application on 17th September 1983 before the Tahsildar, Kankavali under Section 70(b) of the Tenancy Act for a declaration that his father was a tenant from 1.4.1957 and thereafter he has become a

tenant. He adduced evidence of himself and also examined one witness Gangaram Kadam. The landlord examined himself. Thereafter the Tahsildar Kankavali passed an order in favour of the tenant and gave a declaration the applicant is the tenant of the suit land prior to 1.4.1957. The landlord filed an appeal against this order before the Sub-Divisional Officer, Kankavali. That appeal was allowed and the order of the Tahsildar was set aside by the Sub-Divisional Officer by his judgment dated 20.5.1990. The tenant thereafter filed a Revision before the Maharashtra Revenue Tribunal. That Revision came to be allowed by the MRT by its order dated 21.1.1992 and, hence this petition.

2. The advocate for the petitioner mainly contended that if the respondent was claiming to be a tenant from 1.4.1957 and that too through his father, then it was expected of the tenant to bring on record the vital documents in that regard viz. 1] 7 x 12 extract of the relevant period showing his name in the cultivation column as tenant; 2] Receipt for payment of land revenue; and 3] receipt for payment of rent to the landlord. Mr.Dani, the learned advocate

appearing for the petitioner, pointed out that even though the respondent was claiming to be in occupation of the suit land as tenant, according to the respondent, not a single document out of the three named above was in his possession or in his favour. Most important thing, which Mr.Dani pointed out, is that the revenue record did not at all support the claim and contention of the tenant either in his favour or in favour of his father. In other words, even the tenant claims to be a tenant from 1.4.1957, not a single crops statement of any year from 1957 to 1983 showed his name in the cultivation column as tenant or in any capacity whatsoever. Neither the tenant had with him any receipt about payment of rent to the landlord nor he had any receipt about payment of revenue to the Government. The learned advocate for the landlord, therefore, contended that the tenant actually had no evidence with him and, only on oral version the landlord could not be deprived of his rights over the property and no declaration of tenancy should have been given in favour of the tenant by the Tahsildar or MRT.

3. As against this learned advocate Mr.Gadkari contended that the tenant was not

claiming to be contractual tenant but he is deemed tenant under Section 4 of the Tenancy Act. Section 4(1) of the Tenancy Act provides as under:-

"A person lawfully cultivating any land belonging to another persons shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not, -

- (a). a member of the owner's family,
or
- (b). a servant on wages....., or
- (c). a mortgage in possession.

4. The question is not what the tenant claims to be. He may claim anything to deprive the landlord of the right over his own property. The question is how the tenant proves his contentions. Period of 26 years, to be precisely, from 1957 to 1983 is a long long period and if for this intervening period, the tenant has no document whatsoever with him either in the form of crops statement or 7 x 12 extract or rent receipt or land revenue receipt, then

tenant's contention was outright required to be rejected as has been done by the Sub-Divisional Officer. The learned advocate for the respondent/tenant drew my attention to the evidence of one witness Gangaram Kadam. What he has stated is that, "According to his information, the respondent is cultivating the suit land for 25 years". From this statement on oath it is clear that the witness has no personal knowledge about the respondent's cultivating land. His evidence is, therefore, hearsay and was rightly considered by the Sub Divisional officer and rejected.

5. Learned advocate Mr.Gadkari, appearing for the respondent/tenant, relied upon the judgment of this Court in the case of **Ashok Dwarkanath Ghurye and another v/s. Narayan Vasudeo Dhond** reported in **1989 (1) Bom.C.R.625** in favour of his contention. This Court in para 12 held as under :-

"But there is a 3rd point raised by Mr.Sawant, appearing for the petitioner, and I may make a reference to the same. He relied upon the judgment of a learned

Singled Judge of this Court (Chandurkar, J.) in (Special Civil Application No.277 of 1972, decided on 8-8-1977 (Balasaheb Londhe v. H.D.Nimbal). There it has been held that if a person pleads contractual tenancy, gets an issue framed on that basis from the Civil Court, but fails to prove his contractual tenancy in the Tenancy Court, cannot turn around and contend that if not contractual tenancy, at least a deemed tenancy arising out of Section 4 of the Tenancy Act should be held proved. This Court has held that if this plea is accepted by the Tenancy Court, after having negatived the contender's plea of contractual tenancy, the Tenancy Courts would be exceeding their jurisdiction in recasting of the issue referred to them by the Civil Court. This is precisely the position in the present case."

It is true that in the later part of the said para, the Single Judge has observed as "A deemed tenancy postulates absence of a contractual tenancy at the time when deemed tenancy is

pleaded" This may be true, but the question is of proof and evidence to substantiate the contention. Whether a person is cultivating another's land is a question of proof. What was his relationship is a question of proof; in what capacity he is cultivating is a question of proof and when the rights of tenancy are always and necessarily supported by entries in revenue record, though may not be in every case, then absence of any entry in favour of the respondent for the period of 26 years long is a strong circumstance to come to the conclusion that his claim and contention are totally false and bogus. In this view of the matter, this petition is required to be allowed. Hence the order :-

:ORDER:

Petition is allowed.

Rule is made absolute in terms of prayer clauses (a) and (b).

The order of the Tahsildar and the order of the Maharashtra Revenue Tribunal are set aside and quashed. The order of the

Sub-Divisional Officer is upheld.

Rule is answered accordingly.

No order as to costs.

[D.G.DESHPANDE, J.]